

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO.1765 OF 2007.

Office Notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's orders

CORAM : R.C.CHAVAN, J.

DATED : MAY 04, 2007.

1. Heard Shri D.T. Shinde, learned counsel for the petitioner, Shri Pathan, learned counsel for respondent No.1, Shri Vyawahare, learned counsel for respondents No.2 and 3 and Shri Datta, learned counsel for respondent No.4.

2. The petitioner takes exception to order passed by learned 3rd Ad-hoc Additional District Judge, Chandrapur rejecting petitioner's application for condonation of delay in applying for restoration of Regular Civil Appeal No.77 of 2003 which was dismissed in default on 25.07.2005. The petitioner's conduct in neglecting to attend his proceedings before the Courts below can be seen from the orders passed by learned 3rd Ad-hoc Additional District Judge. The petitioner sought

restoration of Regular Civil Appeal No.77 of 2003 which was dismissed in default on 25.07.2005. While seeking restoration and attempting to explain the delay the petitioner stated that in the month of May-June, 2005 the petitioner was seriously ill. This illness is irrelevant for condonation of delay since the restoration application was dismissed on 25.07.2005 i.e. illness was over. In paragraph 3 of the application the petitioner had stated before the District Court that in the month of December, 2005 the petitioner was admitted in hospital and was bed ridden till 2006. He does not say anything about time from 25.07.2005 till December, 2005. The petitioner, therefore, had adequate opportunity of filing the application for restoration of Reg. Civil Appeal No. 77 of 2003, dismissed on 25.07.2005, since he was hale and hearty from that date during the period of limitation, prescribed by law and even till 20th December, 2005 when he was hospitalised. Therefore, it cannot be said that the learned 3rd Adhoc Additional District Judge was in error in rejecting the application. The petitioner cannot be shown any indulgence by awarding costs, as suggested by the learned counsel for the petitioner, since the petitioner has been in habitual default as far as matters in the Court are concerned, where he allowed the matters to be decided against him.

4. In view of this, the petitioner has not made out case for invoking jurisdiction under Articles 226 or 227 of the Constitution. The petition is, consequently, dismissed.

JUDGE.

RR.